

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NICHOLE MCCANN
Plaintiff,

v.

WALMART, INC., WAL-MART
STORES EAST, INC.,
WAL-MART STORES, INC., and
WALMART STORE NO. 2650,

Defendants.

CIVIL ACTION

No.

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

Defendants, Walmart, Inc., Wal-Mart Stores East, Inc., Wal-Mart Stores, Inc., and Walmart Store No. 2650 (more properly identified as Wal-Mart Stores East, LP and hereinafter referred to collectively as “Walmart”), by and through their undersigned counsel, hereby file this Notice of Removal pursuant to 28 U.S.C. §§ 1441(a) and (b) and 1446(b) and (c) to remove this action from the Court of Common Pleas of Philadelphia County, November Term, 2018, No. 02544, where it is now pending, to the United States District Court for the Eastern District of Pennsylvania, and in support thereof, state as follows:

1. On November 21, 2018, Plaintiff filed a Complaint in the Court of Common Pleas of Philadelphia County, November Term, 2018, No. 02544 against Walmart. See a true and correct copy of the Complaint, attached hereto as **Exhibit “A.”**
2. The Complaint was served by mail to Walmart on November 30, 2018.
3. Walmart filed an Answer with New Matter in the Court of Common Pleas of Philadelphia County on December 21, 2018. See a true and correct copy of the Answer with New Matter, attached hereto as **Exhibit “B.”**

4. The action arises from a slip-and-fall accident that occurred on August 3, 2017 on Walmart's premises at 4301 Byberry Road in Philadelphia, Pennsylvania 19154. See Exhibit "A" ¶¶7, 11.

5. The Complaint alleged that Plaintiff sustained serious and permanent injuries, including nondisplaced patellar fracture of the right knee, knee pain, and ankle pain. See Exhibit "A" ¶18.

6. The Complaint did not provide any specific monetary demand or specific information regarding damages.

7. On July 20, 2018, Plaintiff provided Claims Management Inc., a third-party company which handles Walmart's customer incident claims, a pre-suit demand letter for \$145,000. See a true and correct copy of Plaintiff's demand letter, attached hereto as **Exhibit "C."**

8. On December 19, 2018, Plaintiff's counsel, Michael T. van der Veen, communicated by telephone that Plaintiff's current demand after filing suit is \$375,000.

9. Given Plaintiff's July 20th and December 19th demands, the amount in controversy exceeds the Court's relevant jurisdictional amount of Seventy-Five Thousand Dollars (\$75,000).

10. The Court of Common Pleas of Philadelphia County is within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania.

11. Plaintiff alleges that she is a citizen of the Commonwealth of Pennsylvania and resides therein at 1500 Church Street in Philadelphia, Pennsylvania 19124. See Exhibit "A."

12. Defendant Walmart, Inc. is a Delaware corporation with its principal place of business in Bentonville, Arkansas as stated in Plaintiff's Complaint.

13. Defendant Wal-Mart Stores, Inc., now known as Walmart Inc., is a Delaware corporation with its principal place of business in Arkansas as stated above.

14. Defendants Wal-Mart Stores East, Inc. and Walmart Store No. 2650 are fictitious entities to which the citizenship is irrelevant to the Court's analysis.

15. The Walmart Store at which this accident occurred is operated by Wal-Mart Stores East, LP, which is a limited partnership organized and existing under the laws of the State of Delaware with principal business offices located in Bentonville, Arkansas.

16. Walmart Inc., a Delaware corporation with its principal place of business in Arkansas, is the ultimate and sole (100%) owner of Wal-Mart Stores East, LP through various wholly-owned operating entities as follows:

- a. Walmart Inc. is the sole (100%) owner of Wal-Mart Stores East, LLC, which is an Arkansas corporation with its principal place of business in Arkansas;
- b. Wal-Mart Stores East, LLC, is the sole (100%) owner of WSE Management, LLC and WSE Investment, LLC, which are both Delaware limited liability companies whose principal places of business are in Arkansas;
- c. WSE Investment, LLC is the 99% owner and limited partner of Wal-Mart Stores East, LP; and
- d. WSE Management, LLC is the 1% owner and general partner of Wal-Mart Stores East, LP.

17. Accordingly, none of Wal-Mart Stores East, LP's limited or general partners are citizens of the Commonwealth of Pennsylvania.

18. For all of these reasons, the requirements of diversity jurisdiction are satisfied.

19. Where a case stated by the initial pleading is not removable, “a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3) and §1446(c)(3)(A).

20. The Complaint, along with Plaintiff’s demand letter dated July 20, 2018, and telephone communication of current demand of \$375,000 makes the case’s value in excess of \$75,000, warranting removal.


21. Removal is proper pursuant to 28 U.S.C. § 1441(a) and (b) which authorizes the removal of any civil action of which the District Courts of the United States have original jurisdiction and if none of the parties in interest properly joined and served as a defendant is a citizen of the state in which such action is brought.

22. For all of the reasons set forth herein, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 as the parties are citizens of different states and the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000).

WHEREFORE, Defendants, Walmart, Inc., Wal-Mart Stores East, Inc., Wal-Mart Stores, Inc., and Walmart Store No. 2650, respectfully request that the State Action be removed from the Court of Common Pleas of Philadelphia County to the United States District Court for the Eastern District of Pennsylvania.

McDONNELL & ASSOCIATES, P.C.

Dated: December 27, 2018

By: 
Patrick J. McDonnell, Esquire
Barkha Patel, Esquire
Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NICHOLE MCCANN
Plaintiff,

v.

WALMART, INC., WAL-MART
STORES EAST, INC.,
WAL-MART STORES, INC., and
WALMART STORE NO. 2650,

Defendants.

CIVIL ACTION

No.

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I, Barkha Patel, Esquire, hereby certify that the Notice of Removal was filed with the Court, available for viewing on ECF, and served via e-mail on the following:

Michael T. van der Veen, Esquire
Van Der Veen, O'Neill, Hartshorn & Levin
1219 Spruce Street
Philadelphia, PA 19107
Attorneys for Plaintiff

McDONNELL & ASSOCIATES, P.C.

Dated: December 27, 2018

By: 

Barkha Patel, Esquire

Attorneys for Defendants